



## Right to publications under parliamentary authority

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### Introduction

Clause (1) of Article 105 confers the freedom of speech, but this is subject to the provisions of the Constitution and to the rules and standing orders of Parliament <sup>[1]</sup>.

Under Clause 2 of Article 105 no member of Parliament shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in Parliament or any Committee thereof, and no person shall be liable in respect of the Publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

In a democratic country such type of right of privileges of the House is essential for proper discharge of its functions. The entire relationship of the press with the Legislature is based on the principle that the public interest in a democracy for independence of the Legislature is no less than that in the freedom of expression and of the press as a media thereof.

It may be stated that Clauses (1) and (2) of Articles 105 and 194 confer privileges in respect of two matters only, namely, freedom of speech in Parliament or the legislature of a State and immunity in respect of publication of proceedings, reports, etc. of a House by or under the authority of that House. Out of these matters, Article 105(1) refers to the privilege of freedom of speech which primarily is the privilege of the individual member of Parliament, clause (2) of the said Article gives complete immunity to a member of Parliament from any action in court in respect of anything said or done in Parliament to authorize any person for publication of any report, paper, votes or proceedings and any person so authorized is immune from any liability in respect of such publication <sup>[2]</sup>.

Freedom of speech in Parliament or a State Legislature is absolute and unfettered. This can be further substantiated from the fact that freedom of speech and expression which is guaranteed under Article 19(1)(a) has been specifically made subject to the reasonable restrictions which might be imposed under Article 19(2), whereas the freedom of speech in Parliament is subject only to those provisions of the Constitution which regulate the procedure of Parliament <sup>[3]</sup>.

In *Tej Kiran v. Sanjiva Reddy* <sup>[4]</sup>, while interpreting the expression "in respect of anything said in Parliament", occurring in Article 105 the Supreme Court observed: "The article confers immunity *inter alia* in respect of anything said... In Parliament." The word "anything" of the widest import and is equivalent to "everything". The only limitation arises from the words "in Parliament" which means during the sitting of Parliament and in the course of the business of Parliament. Once it was proved 'that Parliament was sitting

and its business was being transacted, anything said during the course of that business was immune from proceedings in any court. This immunity is not only complete but it is as it should be. It is not subject to the provisions of the Constitution.

Thus, if a member of a House has been detained under a valid detention order, he can claim no special status higher than that of an ordinary citizen <sup>[5]</sup>. Similarly in *M.S.M. Sharma v. Krishna Sinha* <sup>[6]</sup>, the Supreme Court was quite categorical in holding that freedom of speech in Legislature is not subject to Article 19(1)(a).

The underlying principle has been stated to be, that people's representatives should be free to express themselves without fear of legal consequences. The privileges enables the House and its members to discharge their parliamentary functions more effectively and without any interference from any quarter. The conferment of privileges also enables the House of vindicate its authority, prestige and power and protect its members from any obstruction in the performance of their functions. Thus, the law seeks to make an adjustment between the interests of the press and the Legislatures.

The question whether documents published under parliamentary authority are privileged or not was raised for the first time in the 9<sup>th</sup> century in *Stockdale v. Hansard* <sup>[7]</sup>. In England, each House of Parliament has an absolute privilege to publish its proceedings, so that neither an officer of Parliament nor any Member is liable under the ordinary law for defamatory or other unlawful matter if contained in a proceeding of a House of Parliament, and published in an official report <sup>[8]</sup>.

If such proceedings are published privately, or through an unofficial press, there is no absolute liability and both the Member who made such speech, as well as the press which published it would be liable the ordinary law. The common law, however, offers a qualified privilege having regard to the fact that such matter was contained in a Parliamentary proceedings, the publication of which, even though made through the private press, was essential to the welfare of the nation <sup>[9]</sup>.

Thus, rule of immunity from publication does not protect private publications, made without the authority of the House. But the Publication is privileged on the same principle as an fair and accurate report of proceedings in a Court of public justice is privileged, viz., that advantage of publicity to the community at large outweighs any private injury resulting from the publication. In other words, in England the members of the legislatures as well as persons authorized by the Parliament to that effect have got very extensive privilege as

compared to other individuals to publish parliamentary proceedings.

In India, for the first time the Court considered that up to what extent an individual enjoys privileges with respect to parliamentary privileges in *Suresh Chandra v. Punit Gola's* case <sup>[10]</sup>. The fact of the case is that 'Lok Sevak' a newspaper – published from Calcutta, published a report of the Legislative Assembly of West Bengal which included a speech of Dr. Suresh Chandra Banerjee, a member of house. Dr. Banerjee alongwith other two petitioners was the member of Editorial Board of aforesaid Newspapers. The fourth petitioners was the publisher of the Newspaper in question. In this case it was alleged that the speech of Dr. Banerjee contained defamatory matter of the opposite party and thereupon the opposite party filed a complaint in the Court of the Chief Presidency Magistrate, Calcutta against the four petitioners. The petitioners went before the Calcutta High Court and contended that the publication in question was privileged. Dr. Banerjee was not charged as a member of House, but as a man concerned with publication of defamatory matter in a newspaper, nor he took the defence of his being a member. The court held that the foregoing qualified privilege of the press in respect of publication of Parliamentary proceedings under English Common Law, was not available in a criminal proceeding in India because the publication in question was not protected by any provision in the Constitution. Under Clause (2) of Articles 194 or 105 only the publications under the authority of house are protected, and there was nothing else to except a newspaper report from the criminal law of defamation as codified in Section 499 and 500 of the I.P.C. Hence, a newspaper report, however fair or faithful, would be under criminal liability for defamatory Statements in such report, even though it merely reproduced a speech of other proceedings in the Legislature, or even though in civil proceedings the English common law rule in *Wason's* case <sup>[11]</sup> in *Jatish Chandra v. Hari Sadhan's* case <sup>[12]</sup>.

*Harendra Nath v. Dev Kenta* <sup>[13]</sup> was the another case in which question of relation between fundamental rights and parliamentary privileges was raised in Assam High Court, this was a case in which an editor of the newspaper challenged the action of privilege committee of the Assam Legislature Assembly which summoned him to appear before it to answer a charge of breach of privileges which he was alleged to committed by publishing an article in his newspapers. He contended that the act of Privileges Committee violated his fundamental right to freedom of press guaranteed under Article 19(1)(a) of Constitution. The High Court rejected the petition of editor on the ground that the Court has no power to interfere with the internal proceedings of the House of Legislatures. One thing is very obvious from this judgement that parliamentary privileges were considered to be superior to fundamental right <sup>[14]</sup>.

In *Searchlight* <sup>[15]</sup> case where an Editor was issued a breach of privilege notice by the Bihar Legislative Assembly for he had published a portion of the Proceedings which the speaker had ordered to be expunged. The Editor moved the Supreme Court and raised the question that the order of the speaker violated his fundamental right to freedom of expression guaranteed under Article 19(1)(a). The Supreme Court held that publication by a newspaper of a portion of member's speech

in the House which the speaker had ordered to be expunged amounted to breach of privilege of the House for which it can take action. The Court pointed out that the general provision giving India's Legislature the same privileges as those of the House of Commons was more specific than the specific provision that freedom of speech and expression was subject to only some clearly specified restriction found to be in the public interest <sup>[16]</sup>. On the further question whether privileges of Parliament of the Legislature of a State have an overriding effect on the fundamental right of freedom of speech and expression guaranteed to the press under Article 19(1)(a), the court observed that the provisions of Articles 105(3) and 194(3). The same position has been reiterated in *Keshav Singh's* <sup>[18]</sup> case also.

In *R. K. Karanjia v. Speaker Lok Sabha's* <sup>[19]</sup> case the Supreme Court again affirmed the views held by it in the first *Searchlight* case. This was the case in which Mr. R. K. Karanjia, Editor of 'Bitz' was found guilty of breach of Privileges of House of People for publishing an article in 'Bitz' dated April 15, 1961 on the performance of Acharya J.B. Kripalani, a member of the House of People, in the House, he was summoned to the bar of the House to be reminded. Mr. Karanjia challenged the validity of the order of the people impose unreasonable restriction on the exercise of the freedom of speech and expression and that of press guaranteed to him under Article 19(1)(a) <sup>[20]</sup>.

It may be stated that Article 105(2) provides immunity to those reports which have been published under the authority of the House. In England, however, a newspaper publishing the proceedings of the House of Commons enjoys a qualified privilege. After the aforesaid decision in *Suresh v. Punit* <sup>[21]</sup> case, Parliament enacted the Parliamentary Proceedings (Protection of Publication) Act, 1956, to bring the Indian Law in tune and at par with the English law. The immunity conferred by it was extended to newspaper as well as radio broadcasts covering both civil and criminal liability, provided:

1. The publication must be a substantially true report ;
2. It must be for public good ;
3. Must not be actuated by malice ; and
4. It must be a report of the proceedings of either House of Parliament

Since the Legislation was confined to Parliament alone, the State Legislatures also enacted their own laws <sup>[22]</sup>. The Government gave a second thought to the matter during Emergency and to protect high dignitaries from defamatory publications in the press the law was repealed in December 1975 but re-enacted in 1977 when the Janata Government came to power. Now the law on the subject has been specifically incorporated in Article 361A which has been inserted by the Constitution (44<sup>th</sup> Amendment Act, 1978, says-

“(1) No 'person' shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature of a State, the publication is proved to have been made with malice;

Provided that nothing in this clause shall apply to the publication of any report of the proceedings of a secret sitting

of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of Legislature of a State.

(2) Clause (1) shall apply in relation to reports or matters broadcast by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting station as it applied in relation to reports or matters published in a newspaper.”

Explanation, in this article, “newspaper” includes a news agency report containing material for publication in a newspaper.”

Being a constitutional provision, the immunity offered by it would thus be available even if the speech or other material forming part of the proceedings in the House offends against the law of sedition, the Official Secrets Act, conspiracy to deceive, the law of defamation and other offences under the Penal Code <sup>[23]</sup>.

The other question that may arise for consideration is : whether the publication of expunged portions of parliamentary proceedings are covered under the protection afforded by Article 361, or whether any person who publishes such expunged portion of the proceedings is guilty of a breach of privileges of the House. In, India, a power to expunge objectionable words used in debates (on the grounds of defamation, decency or unparliamentary expression) from the proceedings has been expressly conferred on the Presiding Officer by the Rules of the House of the People <sup>[24]</sup> ad the Council of States <sup>[25]</sup>. It is obvious that when any words are thus expunged from the debates of a House of the Legislature, they do not form part of the proceedings, so that any right to publish the proceedings which may otherwise exist, would not be available as regard the expunged words or passages.

However, this question came up before the Supreme Court in *Searchlight* case inasmuch as the constitutionality of the very power of a Legislature to withhold from publication any portion of its proceedings was questioned, as being a contravention of the freedom of speech and expression guaranteed by Article 19(1)(a). it was contended that ‘Parliamentary privilege’ was not enumerated as an exception in Clause (2) of Article 19 and, therefore, no legislature in India had the power to prohibit the publication of its proceedings which has taken place in public. The Supreme Court rejected this contention on the following grounds :

- a. In England, the House of Commons has an absolute privilege to prohibit the publication of any part of its debates.
- b. By reason of the latter portion of Clause (2) of Articles 105 and 194 of the Constitution, so long as the privileges are not codified by the respective Legislatures, each House of an Indian Legislature possesses the absolute privilege or prohibiting the publication of any portion of its proceedings and anybody who publishes such expunged or prohibited portion, without the authority of the House of guilty of contempt of that House.

It may further be added that though Article 361 accords protection to newspapers from civil and criminal liability in a court of law, but this protection does not extend to a newspaper found guilty of breach of a House.

Obviously, the provision in Article 361A assumes that a newspaper is an organ for dissemination of information in the public interest and therefore omits the condition of ‘public

good’ <sup>[27]</sup>. The immunity will be available once it is shown that the publisher etc. of the newspaper were not actuated by ‘malice’. In order to claim immunity under Article 361A, it would not be necessary for the journalist to show that any kind of public interest would be served by reproducing the defamatory matter in question, provided the other conditions are satisfied. However, to prepare an accurate report of parliamentary proceedings is not always an easy task. Therefore, the journalists have to go into the entire background of the proceedings they may have to answer the charge for contempt of the House. Nevertheless the newspaper have been quite successful in reporting a fair account of what happens inside the fourwalls of Parliament or a State Legislature. Though the press may be reluctant to comment on the conduct of members still a great deal of freedom is enjoyed by it in exercising its right to publish proceedings of Parliament.

### References

1. See in Particular, Articles 118, 121, 208 and 211; *M.S.M. Sharma v. Sri Krishna*, AIR 1959 SC 395, 409.
2. Chauhan, B.R., “The Codification of Legislative Privileges”, in Alice Jacob (Edn.), *Constitutional Developments Since Independence*, (1975) 158 at P. 165.
3. See *Supra* note 3.
4. AIR 1970 SC 1573 (1574).
5. *Ananda v. Chief Secretary, Govt. of M.P.*, Air 1966 SC 657 at 665 ; See also *Arnod v. King Emperor* (1914) P.C. 116.
6. AIR 1959 SC 395, (popularly known, *Searchlight* case).
7. (1893) 9 A and E. 1.
8. *Ibid*.
9. *Wason v. Walter*, (1868) 4 Q.B. 73.
10. AIR 1951 Cal. 176.
11. *Supra* note 11.
12. Air 1956 Cal. 436.
13. AIR 1958 Assam, 160.
14. *Ibid*.
15. *Supra* note 9 at P. 408.
16. *Ibid*.
17. AIR 1965 SC 745.
18. Decided on 28<sup>th</sup> August 1961 (Unreported) of N.I. Patrika dated 29.8.1961 quoted in Mani, B.N. *Parliamentary Privileges in India*, at p. 423.
19. *Ibid*.
20. *Supra* note 12.
21. See e.g., *The Orissa Legislature Assembly Proceedings* (Protection of Publication) Act, 1960.
22. Basu, D.D., *Law of the Press in India*, (1980) at p. 189.
23. Rules 380-381.
24. Rules 221-222.
25. *Supra* note 8.
26. The expression ‘Public good’ may have been defined as ‘interest of the general public’ – as distinguished from that of an individual –relating to any collective interest, social, economic, sanitary or the like ; see 1<sup>st</sup>, 9<sup>th</sup> and 10<sup>th</sup> Exception to Section 499 of the I.P.C., in *supra* Ch-IV.